

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:)	PROMESA Title III
)	
THE FINANCIAL OVERSIGHT AND)	
MANAGEMENT BOARD FOR PUERTO RICO)	Case No. 17 BK 3283-LTS
)	
as representative of)	(Jointly Administered)
)	
THE COMMONWEALTH OF PUERTO RICO, <i>et</i>)	
<i>al.</i> ,)	
)	
Debtors. ¹)	

In re:)	PROMESA Title III
)	
THE FINANCIAL OVERSIGHT AND)	
MANAGEMENT BOARD FOR PUERTO RICO)	Case No. 17 BK 4780-LTS ²
)	
as representative of)	(Jointly Administered)
)	
PUERTO RICO ELECTRIC POWER)	
AUTHORITY (“PREPA”),)	
)	
Debtors. ³)	

¹ The Debtors in these Title III cases (collectively, the “Title III Cases”), along with each Debtor’s respective title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² The last four (4) digits of PREPA's federal tax identification number are 3747.

³ The PREPA Title III case is jointly administered with the Commonwealth of Puerto Rico, *et al.*, Title III cases under No. 17 BK 3283-LTS. This Motion is filed both in the PREPA Title III case and the Commonwealth of Puerto Rico, *et al.* Title III cases.

**MOTION OF OVERSIGHT BOARD
FOR ORDER EXTENDING APPOINTMENT OF LEAD MEDIATOR**

TO THE HONORABLE JUDGE LAURA TAYLOR SWAIN,
UNITED STATES DISTRICT JUDGE:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Puerto Rico Electric Power Authority (“PREPA”, or the “Debtor”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”),⁴ respectfully submits this motion (the “Motion”), pursuant to sections 315(a) of PROMESA, section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), made applicable to these cases pursuant to section 301(a) of PROMESA, and Local Civil Rule 83J(d)(3), for an order (the “Proposed Order”),⁵ substantially in the form attached hereto as **Exhibit A**, extending the appointment of the Lead Mediator on the Mediation Team appointed in PREPA’s Title III Case (each as defined below). In support thereof, the Oversight Board respectfully states as follows:

JURISDICTION AND VENUE

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this Motion pursuant to section 306(a) of PROMESA.
2. Venue is proper in this district pursuant to section 307(a) of PROMESA.
3. The statutory predicate for the relief sought herein is section 315(a) of PROMESA, section 105(a) of the Bankruptcy Code, made applicable to these cases by section 301(a) of PROMESA, and Local Civil Rule 83J(d)(3).

⁴ PROMESA is codified at 48 U.S.C. §§ 2101-2241.

⁵ In the event of any inconsistency between this Motion and the Proposed Order, the Proposed Order shall govern.

BACKGROUND

4. On June 30, 2016, the Oversight Board was established under section 101(b) of PROMESA. On August 31, 2016, President Obama appointed the Oversight Board's seven voting members.

5. Pursuant to section 315 of PROMESA, "[t]he Oversight Board in a case under this title is the representative of the debtor[s]" and "may take any action necessary on behalf of the debtor[s] to prosecute the case[s] of the debtor[s], including filing a petition under section 304 of [PROMESA] . . . or otherwise generally submitting filings in relation to the case[s] with the court."

6. On September 30, 2016, the Oversight Board designated PREPA as a covered entity under section 101(d) of PROMESA.

7. On July 2, 2017, the Oversight Board issued a restructuring certification pursuant to sections 104(j) and 206 of PROMESA and filed a voluntary petition for relief for PREPA pursuant to section 304(a) of PROMESA, commencing a case under title III thereof ("PREPA's Title III Case").

8. On April 8, 2022, the Court entered two orders in respect of initiating mediation, one to appoint a mediation team (the "Mediation Team") [ECF No. 2772] (the "Appointment Order"), and the other to establish the terms and conditions of the proposed mediation, which was intended to facilitate confidential settlement negotiations of any and all issues and proceedings arising in PREPA's Title III Case (the "Mediation") [ECF No. 2773] (the "Mediation Order").

9. Pursuant to the Mediation Order, the Mediation was originally set to terminate on June 1, 2022 at 11:59 p.m. (Atlantic Standard Time) (the "Termination Date"). The

Termination Date has been extended multiple times, with the most recent extension until April 28, 2023 at 11:59 p.m. (Atlantic Standard Time), unless extended by the Court after due notice [ECF No. 3167].

10. As provided in the Appointment Order, the members of the Mediation Team were initially the Honorable Shelley C. Chapman (the “Lead Mediator”), the Honorable Robert D. Drain, and the Honorable Brendan L. Shannon.

11. On June 30, 2022, the Lead Mediator retired from her role as United States Bankruptcy Judge for the Southern District of New York.⁶ By order of the Judicial Council of the Second Circuit dated June 13, 2022, the Lead Mediator was recalled to continue her service from July 1, 2022 through September 30, 2022.⁷

12. On October 3, 2022, the Oversight Board filed the *Application of Oversight Board for Entry of Order (i) Ratifying Continued Appointment of Lead Mediator and (ii) Appointing Willkie Farr & Gallagher LLP as Special Advisor to the Lead Mediator* [ECF No. 3018].

13. On October 7, 2022, the Court entered the *Order (I) Ratifying Continued Appointment of Lead Mediator and (II) Appointing Willkie Farr & Gallagher LLP as Special Advisor to the Lead Mediator* [ECF No. 3031] (the “Lead Mediator Order”), approving the appointment of the Lead Mediator through April 7, 2023 (the “Term End Date”).

14. On December 31, 2022, the Honorable Robert D. Drain retired from judicial service. Pursuant to the *Notice and Order Regarding Mediation Team* [ECF No. 3137], effective

⁶ Press Release, Recall of Bankruptcy Judges Chapman and Drain (June 24, 2022) (<https://www.nysb.uscourts.gov/news/recall-bankruptcy-judges-chapman-and-drain>).

⁷ Order of Recall, Judicial Council of the Second Circuit, dated June 13, 2022 (<https://www.nysb.uscourts.gov/sites/default/files/pdf/OrderofRecall-Chapman.pdf>).

as of December 31, 2022, the members of the Mediation Team are the Lead Mediator and the Honorable Brendan L. Shannon. Judge Shannon's appointment remains in place through the conclusion of mediation.

15. On March 3, 2023, the Court approved the *Disclosure Statement for the Modified Second Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority*, dated March 1, 2023 [ECF No. 3304].

16. On March 22, 2023, the Court entered the *Opinion and Order Granting in Part and Denying in Part the Financial Oversight and Management Board for Puerto Rico's Motion for Summary Judgment and the Defendant's and Intervenor-defendants' Cross-motion for Summary Judgment* [Adv. Proc. No. 19-00391, ECF No. 147] (the "Lien Challenge Order"), among other things, directing certain parties to commence working with the Mediation Team to consensually resolve outstanding disputes regarding the *Modified Second Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority*, dated March 1, 2023 [ECF No. 3296].

RELIEF REQUESTED

17. By this Motion, the Oversight Board, as the Debtors' Title III representative, respectfully requests entry of the Proposed Order, extending the appointment of the Lead Mediator, to continue serving on the Mediation Team with Judge Shannon.

BASIS FOR RELIEF

18. In accordance with the Lien Challenge Order, to further the Court's mandate to promptly resolve the topics of the Mediation, and to facilitate such negotiations by the Mediation Team in accordance with the terms of the Mediation Order, the Oversight Board seeks to extend the Term End Date for six months from the date of entry of the Proposed Order, extendable upon

the mutual consent of the Mediation Team and the Mediation Parties (as defined in the Appointment Order), with such extension being approved by the Court.

19. In accordance with the Lead Mediator Order, on March 29, 2023, the Lead Mediator reached out to the Mediation Parties to obtain their consent to extend the Term End Date for six months from the date of entry of the Proposed Order. The Lead Mediator requested responses by noon on March 31, 2023, and noted if no response was received that consent would be presumed. On March 31, 2023, the Lead Mediator informed counsel to the Oversight Board that all Mediation Parties had either consented to the extension or were deemed to consent.

NOTICE

20. The Oversight Board, as Title III representative for PREPA, has provided notice of this Motion to the following parties: (a) the Office of the United States Trustee for the District of Puerto Rico; (b) the indenture trustees and/or agents, as applicable, for the PREPA's bonds; (c) the entities on the list of creditors holding the 20 largest unsecured claims against PREPA; (d) counsel to the statutory committees appointed in PREPA's Title III Case; (e) the Office of the United States Attorney for the District of Puerto Rico; (f) counsel to AAFAF; (g) the Puerto Rico Department of Justice; (h) the Other Interested Parties;⁸ and (i) all parties filing a notice of appearance in PREPA's Title III Case. The Oversight Board, as representative for PREPA, submits that, in light of the nature of the relief requested, no other or further notice need be given.

⁸ The "Other Interested Parties" include the following: (i) counsel to certain of the insurers and trustees of the bonds issued or guaranteed by PREPA; and (ii) counsel to certain ad hoc groups of holders of bonds issued or guaranteed by PREPA.

RESERVATION OF RIGHTS

21. The Oversight Board files this Motion without prejudice to or waiver of any rights pursuant to section 305 of PROMESA,⁹ and does not by this Motion provide any consent

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⁹ PROMESA section 305 provides:

LIMITATIONS ON JURISDICTION AND POWER OF COURT.

Subject to the limitations set forth in titles I and II of this Act, notwithstanding any power of the court, unless the Oversight Board consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—

- (1) any of the political or governmental powers of the debtor;
- (2) any of the property or revenues of the debtor; or
- (3) the use or enjoyment by the debtor of any income-producing property.

PROMESA § 305.

otherwise required by section 305.

WHEREFORE the Oversight Board, as Title III representative for PREPA, respectfully requests that the Court enter the Proposed Order annexed hereto granting the Motion, and grant the Oversight Board such other and further relief as is just.

Dated: April 3, 2022
San Juan, Puerto Rico

Respectfully submitted,

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EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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Debtors. ¹)	

In re:)	PROMESA Title III
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THE FINANCIAL OVERSIGHT AND)	
MANAGEMENT BOARD FOR PUERTO RICO)	Case No. 17 BK 4780-LTS ²
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PUERTO RICO ELECTRIC POWER)	
AUTHORITY (“PREPA”),)	
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² The last four (4) digits of PREPA's federal tax identification number are 3747.

³ The PREPA Title III case is not jointly administered with the Commonwealth of Puerto Rico, *et al.*, Title III cases jointly administered under No. 17 BK 3283-LTS. This Motion is filed both in the PREPA Title III case and the Commonwealth of Puerto Rico, *et al.* Title III cases.

ORDER EXTENDING THE APPOINTMENT OF LEAD MEDIATOR

Upon consideration of the *Motion of Oversight Board for Order Extending Appointment of Lead Mediator* (Docket Entry No. _____ in Case No. 17-4780) (the “Motion”),⁴ filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) as the Title III representative of the Puerto Rico Electric Power Authority (“PREPA”), pursuant to section 315(b) of the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (“PROMESA”) and Local Civil Rule 83J(d)(3), the Court hereby FINDS AND DETERMINES that (i) the Court has subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to section 306(a) of PROMESA; (ii) venue is proper before this Court pursuant to section 307(a) of PROMESA; (iii) the Oversight Board provided adequate and appropriate notice of the Motion under the circumstances and that no other or further notice is required; (iv) and the Court having found that the relief requested in the Motion is in the best interests of PREPA, its creditors, and other parties in interest; (v) based on the representations made in the Motion, and due deliberation thereon, the Court having found that good and sufficient cause exists for the granting of the relief set forth herein, it is hereby ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The appointment of the Lead Mediator is hereby extended through the date that is six (6) months from the date hereof, as such date may be extended from time to time, and her appointment through such date is hereby ratified.
3. All other terms and provisions of the *Order (I) Ratifying Continued Appointment of Lead Mediator and (II) Appointing Willkie Farr & Gallagher LLP as Special Advisor to the Lead Mediator* [Docket Entry No. 3031 in Case No. 17-4780] remain in effect.

⁴ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

4. Notice of the Motion as provided therein shall be deemed to be good and sufficient notice of such Motion, and the requirements of the Local Rules are satisfied by the contents of the Motion.

5. This Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

SO ORDERED.

Dated: _____, 2023

LAURA TAYLOR SWAIN
United States District Judge